

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE: PROPULSID : **MDL NO. 1335**
PRODUCTS LIABILITY LITIGATION :
 : **SECTION: L**
 :
 : **JUDGE FALLON**
 : **MAG. WELLS ROBY**
THIS DOCUMENT RELATES TO ALL CASES :
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**JOINT REPORT NO. 16 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Report No. 16. The parties bring to the Court's attention that some issues may need to be supplemented or new issues may be addressed prior to the July 18, 2002 conference as PLC, Russ Herman, is out of town and Ken Conour, Defendants' counsel knowledgeable of document production, is ill.

**I. Update of Rolling Document Production and Electronic Document Production -
(PTO 2 - IX)**

DLC advises that as of July, 2002 approximately 6,602,101 pages of documents have been produced. DLC further advises that there are approximately _____ additional pages of hard copy

documents to be produced and that these should be produced by _____. The most recent production on July 3, 2002 consisted of approximately 19,890 pages of Beerse e-mails. This production consisted of images only. The PSC is still awaiting receipt of the objective coding, a cross reference file for the images and a source index in MS Excel format as well as the OCR text files for non-redaction documents, all of which are to be produced pursuant to the protocol previously established. Counsel for defendants and PLC have met and conferred on several occasions to discuss the production of electronic data. DLC advises that the balance of electronic data should be produced by _____.

The parties are continuing discussions regarding a nominee for Special Master as required by Section H(3) of PTO 10.

II. State Liaison Counsel - (Minute Entry, November 16, 2000)

Walter Dumas is no longer a member of the state liaison committee. Additionally, PLC has communicated with counsel for the state court litigations to coordinate depositions.

III. Patient Profile Form and Authorization

As of July 15, 2002, Defendants have received 1371 Patient Profile Forms (PPFs). 99 are currently overdue, and 2 PPFs will become due within thirty (30) days. PLC and DLC continue to communicate directly with plaintiff counsel whose PPFs are overdue. DLC and PLC will work together to contact counsel for plaintiffs whose PPFs are overdue to obtain the delinquent documents. In the event such efforts are not successful, DLC will prepare a Motion to Dismiss with Prejudice as to these plaintiffs.

IV. Subpoena to FDA

PLC has reviewed the production from FDA. The parties are discussing certain aspects of the production. The parties will be prepared to discuss this at the July 18, 2002 Monthly Status Conference.

V. Service List of Attorneys

The parties will present the Court with the most current Master List of all Counsel, which will contain, where available, e-mail addresses.

VI. Ongoing Studies/Subpoena to BevGlen

PLC has asked Defendants to declassify the clinical and non-clinical reports of CIS-NED 32 and the 800+ studies which were identified in Defendants' Response for Production of Documents, dated May 3, 2002. The parties have conferred and are unable to agree on declassification of the CIS-NED-32 documents.

As to the remaining 800+ studies, Defendants will not declassify the reports as Defendants believe such information is confidential and proprietary. The parties have met and conferred and the PSC will be filing, this week, a Motion to Declassify these documents as well as the CIS-NED-32 reports. The parties will be prepared to discuss this at the July 18, 2002, Monthly Status Conference.

VII. Third Party Subpoena Duces Tecum Issued by PSC

PLC has been in direct contact with counsel for Covance, Mark Ginsky, regarding the remaining documents and/or information the PLC has requested under subpoena. By letter dated July 10, 2002 PSC requested information that Covance had not produced in its original and supplemental production that PSC discovered in the telephone conversation with Mark Ginsky on July 9, 2002. Because the Covance production was incomplete, PLC requested that Covance respond to certain questions in addition to providing certifications as to the document production. PLC is awaiting a response from Covance. The parties will meet and confer as to the status of the documents remaining to be produced.

PLC has attempted to set the depositions of the three outstanding parties to whom subpoenas have

been issued and which DLC was unable to obtain certifications. PLC has communicated with counsel for each of the entities to obtain additional information. If PLC is unable to get the information Motions to Compel will be brought against any non-responsive entity.

PLC will advise the court as to the status of third party subpoena duces tecums as issues arise in the course of discovering information.

VIII. Motion on Class Certification.

DLC has asked PLC for a proposed schedule for concluding briefing on class certification. PLC and DLC agreed that a hearing on class certification would not be scheduled until after all electronic data was received by the PSC and the PSC had an opportunity to review such data. This was conveyed to the court in the meeting with counsel for PLC and DLC on June 27, 2002. Since that time, DLC has proposed that the matter be submitted at the September Monthly Status Conference. PLC has advised that it cannot schedule the matter and respond to DLC's request until it is advised when electronic data will be received. The parties will be prepared to discuss this further at the July 18, 2002 Monthly Status Conference.

IX. Plaintiffs' and Defendants' Respective Requests for Production of Documents

Plaintiffs served on Defendants Interrogatories and Request for Production of Documents, Set No. 5. on February 14, 2002. PLC continues to wait for a response.

PLC and DLC have met regarding production of studies prepared or performed by defendants. PLC has requested in addition to information regarding CIS-NED-32, information regarding assessments issued by the CPMP and the FDA regarding CIS-NED-32. PLC is awaiting receipt of this information.

PLC has filed with the court a Motion to Compel regarding Norcisapride. The Motion to Compel has been set for hearing. The parties will be prepared to discuss is at the July 18, 2002 Monthly Status Conference.

PLC and DLC have met regarding an insurance stipulation. DLC refused to enter into the requested stipulation. PLC has advised additional discovery will be forthcoming on this matter.

X. Motions for Suggestion of Remand

This item may be removed from the agenda

XI. Deposition Procedure

The parties have agreed to the procedure for attaching exhibits at depositions. The parties will present a Motion to Supplement Pre-Trial Order No. 7 to the Court incorporating this agreement for the Court's approval at the July 18, 2002 Status Conference.

XII. Shell/Morganroth Study

On October 19, 2001 Defendants served a subpoena on Dr. William Shell, individually and through his Foundation, for documents relating to the Shell Study. DLC contends there are additional EKG interpretations performed by Drs. Morganroth and Vincent which Dr. Shell used in authoring the study and which have not yet been produced to DLC. PLC has advised that it understands all information from Dr. Morganroth responsive to the subpoena has been produced. Defendants are preparing a Motion to Exclude the Shell report and the EKG interpretations. DLC will furnish PLC with a copy of the Motion before filing.

In addition, Defendants await updated responses to the discovery requests regarding Ongoing Studies, dated May 21, 2001, as to the Tennessee Study and the Sustained Effect Cisapride Registry

Study, identified by PSC in their response to such discovery, and supplemental and updated responses as to any additional studies. PLC advises it has produced such information.

XIII. 30(b)(6) Deposition of Defendants Regarding Studies

Defendants advised PLC they are obtaining a third-party to accurately and reliably create a database to validate the 30(b)(6) testimony. Defendants have forwarded an outline of the database to PLC for input, and are awaiting a response. The parties are prepared to discuss this at the July 18, 2002 Monthly Status Conference.

XIV. Trust Account

The parties have met with representatives of the Whitney Bank regarding the establishment of a trust account. The parties are prepared to discuss this at the July 18, 2002 Monthly Status Conference.

XV. Motion to Dismiss filed by Forshag's Pharmacy

This item may be removed from the Agenda.

XVI. Declassified documents

The PSC requested relief from PTO-5 relating to the confidentiality of all documents filed and utilized in connection with the plaintiff's Motion for Class Certification. The parties have conferred on the request and are preparing a Joint Order to declassify the documents. This order will provide for the declassification of all class certification related documents. However the parties are still discussing the declassification of approximately 7 of the documents.

XVII. Motion to Withdraw as Counsel of Record - Anthony Scott, #01-1394

Plaintiff's counsel has filed a Motion to Withdraw as Counsel of Record in this matter. The parties

will be prepared to discuss this further at the July 18, 2002 Monthly Status Conference.

NEW ITEMS

XVIII. Mediator Status

The parties have agreed on a mediator and will present the Court with the candidate's name and qualifications at the July 18, 2002 Monthly Status Conference.

XIX. Trial Schedule

DLC has provided PLC with a draft of a pre-trial order as to the cases originating in the Eastern District of Louisiana. PLC is reviewing.

XX. Agenda

A proposed Agenda for the July 18, 2002 Monthly Status Conference is attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Report No. 16 of Plaintiffs' and Defendants' Liaison Counsel was served on Plaintiffs' Liaison Counsel by hand and e-mail and by e-service to all parties by uploading same to Verilaw, on this ____ day of July, 2002.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

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		:	JUDGE FALLON
		:	MAG. WELLS ROBY
THIS DOCUMENT RELATES TO ALL CASES		:	
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Monthly Status Conference July 18, 2002 9:00 a.m.

AGENDA

Current Matters:

1. Update of Rolling Document Production and Electronic Document Production
2. State Liaison Counsel
3. Patient Profile Form and Authorization
4. Subpoena to FDA
5. Service List of Attorneys
6. Ongoing Studies/Subpoena to BevGlen
7. Third Party Subpoena Duces Tecum Issued by PSC
8. Motion on Class Certification
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12. 30(b)(6) Deposition of Defendants Regarding Studies
13. Shell/Morganroth Study
14. Trust Account
15. Motion to Dismiss filed by Forshag's Pharmacy
16. Declassified Documents
17. Motion to Withdraw as Counsel of Record - Scott
18. Trial Schedule
19. Agenda